

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 14, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08od-179

OAHU

Grant of Term, Non-Exclusive Easement to Mary J Porter Trust for Seawall,
Landscaping Area, and Pier Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map
Key: (1) 4-4-037:seaward of 012.

APPLICANT:

Mary J Porter Trust whose mailing address is 44-547 Kaneohe Bay Drive, Kaneohe,
Hawaii 96744.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Portion of Grant 4938, Kaneohe,
Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-037:012, as shown on the
attached map labeled Exhibit A.

AREA:

1,810 square feet, more or less, to be determined by the Department of Accounting and
General Services, Survey Division.

ZONING:

State Land Use District:

Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO

X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall, landscaping area, and pier over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff observed the subject encroaching area and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Mrs. Mary Porter recently passed away, and the family is selling the subject property. A boundary survey revealed the subject encroachment. The encroachment includes seawall, landscaping area, and a wooden dock. The family wants to resolve the encroachment prior to the sale.

The Porters provided documents, including family photos dating 1953 & 1958 showing the subject seawall. Further, by a letter dated January 26, 1956 from the Department of Transportation (DOT), Permit No. 1123 was issued to the family to excavate the channel. Staff concurs with the Office of Conservation and Coastal Lands (OCCL) that the encroachment existed prior to 1974.

OCCL has determined the encroachment is not a Conservation District violation thus a CDUA is not required. Further, the beach resources and public access are not negatively impacted by the encroachment. OCCL has no objection to the issuance of a disposition for the subject encroachment. A copy of OCCL's letter is attached as Exhibit B.

At the time of writing this submittal, comment from the Office of Hawaiian Affairs is still pending. Staff will bring any comments from OHA to the Board's attention at the meeting.

Under the previous Kaneohe Bay Piers Amnesty Program, CDUA OA-3017B was approved by the Board on July 13, 2001. It covered all existing piers in Kaneohe Bay including the subject dock. Therefore, staff does not recommend fine on the dock for unauthorized encroachment.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

At a meeting with the staff, the applicant requested to purchase the encroachment from the State. Due to recent Hawaii Supreme Court decision regarding the disposition of ceded land, the Board is prohibited from selling reclaimed land, which is considered as ceded. The applicant inquired the possibility of obtaining an approval to purchase the reclaimed land by the Board, subject to the decision be overturned by the US Supreme Court. Staff believes that it is inappropriate for the current Board to approve a request contingent on an appeal yet to be ruled. Hypothetically, the applicant, or its successors can request from the Board a mutual cancellation of the easement and pursue a purchase if the future legal environment affords such opportunity.


RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-4-037:012, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Mary J Porter Trust

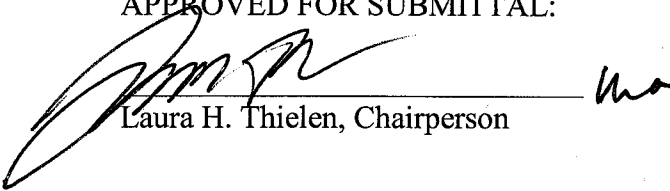
covering the subject area for seawall, landscaping area, and pier purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-4-037:012, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

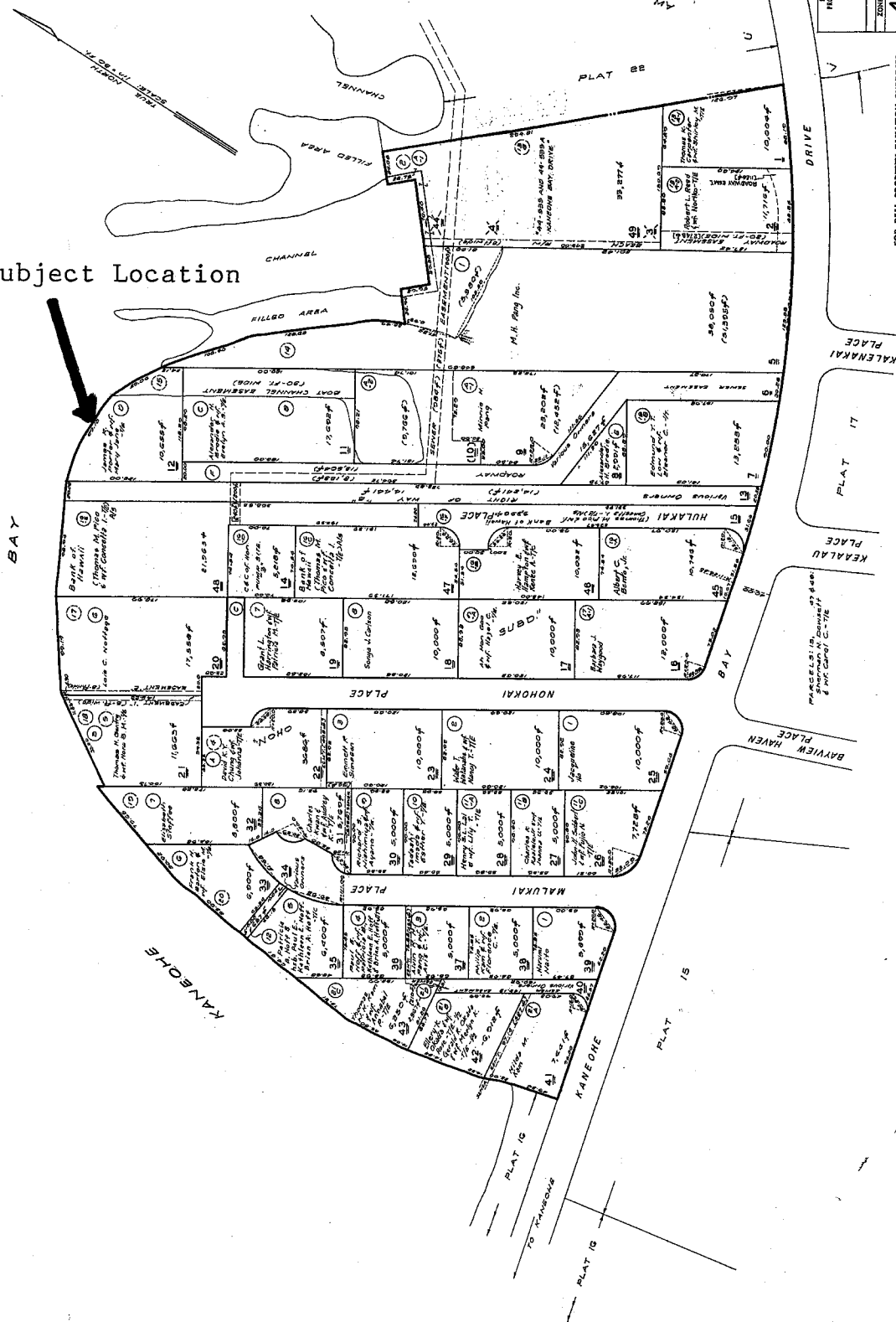
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Laura H. Thielen, Chairperson

Subject Location



FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

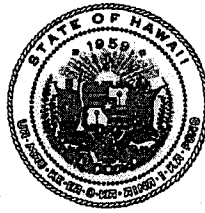
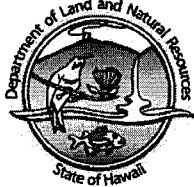
FIRST TAXATION DIVISION		
ZONE	SEC.	PLAT
4	4	37

SCALE: 1 IN. = 50 FT.

POR. GRANT. 4938, KEAALAU, KANEHE, KOOLAPOKO, OAHU

EXHIBIT "A"

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DE

October 31, 2008

Encroachment: OA-09-04

Mr. Lee and Scott Porter
C/O Mary Jane Porter Trust
44-547 F Kaneohe Bay Dr.
Kaneohe, HI 96744

Dear Mr. Porter:

Subject: Shoreline Encroachment (fill and seawall), 44-547 F Kaneohe Bay Dr.
Kaneohe, Hawaii, TMK: (1) 4-4-37:12

The Office of Conservation and Coastal Lands (OCCL) staff has reviewed the submitted documentation and researched dated aerial photos for this case. The encroachment in question is a CRM seawall and filled land, located Makai of the 1948 deeded property boundary. According to the submitted survey map by George Yoshimura dated September 18, 2008, the total area of the encroachment is approximately 1,598 square feet for the filled land and 212 square feet for the subject dock (Figure 1 & 2).

An aerial photograph dated 1961 submitted to our office reveals the presence of what appears to be the subject improvements. In addition we have reviewed the January 26, 1956 authorization letter from the Board of Harbor Commissioners to place dredged channel spoils alongside the present berm. Based on this and other submitted ground photographs the subject wall and fill appears to be authorized and unaltered since its' construction. OCCL staff also recommends relocating and mapping the submerged seawall footing as it appears to be encroaching and not mapped as part of the supplied shoreline map.

In our review of the supplied information we note the subject encroachment request is for the filled land (1,598 ft²) and does not include the subject dock (212 ft²). Historical aerial photographs show this pier to in place in 1961 suggesting it may be a non-conforming structure and may be subject to a previous blanket CUA for piers in this region. While not required to resolve the dock encroachment it is advisable to resolve this while your processing the subject easement request.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement.

EXHIBIT "B"

In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of OCCL staff. Based on the information provided the Department has made the following determinations with regard to the subject improvements:

Surrounding Land Uses:

The surrounding uses are residential with shoreline armoring and landscaped yards and residences in the surrounding parcels.

Beach Resources:

The intertidal area is rocky mudflats and reef further offshore. The shoreline here is composed of filled lands from historically dredged material with little to no recreational sand resources. The area is subject to tidal forces and is not an open coastline with typical wave action. Water quality is fair to poor due to non-point source pollution and soil runoff. Recreational activity other than boating is severely limited due to limited access, water quality and shallow rocky geography.

Public Access:

There is no public access to the shoreline at the subject property. The subject improvements do not reduce (or enhance) public access to the water fronting the parcel and thus are negligible.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment would have negligible benefit to public shoreline access. Public recreation such as fishing, diving and boating takes place offshore of the parcel with little to no recreational shoreline activities. The subject improvements appear to have no significant impact on the shoreline resources and provide improved access for the landowner to the ocean.

Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachment(s).

Affect on Adjacent Properties: The removal of the seawall may lead to increased coastal erosion and may eventually threaten the dwelling as well as neighboring properties and dwellings by flanking erosion.


Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachments to remain through the issuance of an easement for the improvements would have no adverse impacts on natural resources, including beach resources. **Therefore, the OCCL has no objections to an easement request being processed.**

Pursuant to Chapter 171, you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

Please contact the State of Hawaii, DLNR, Land Division at (808) 587-0419 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment. For regulatory purposes, you should also contact the City and County Department of Planning and Permitting for any future development or improvement activities within the Shoreline area.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Dolan Eversole, of the Office of Conservation and Coastal Lands at (808) 587-0377 if you have any questions.

Sincerely,



Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Chairperson's Office
Oahu Board Member
Land Division

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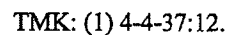


Figure 2. Subject Shoreline and Encroachments



Shoreline Easement

TMK: (1) 4-4-37:12.